

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NETEXIT, INC., <i>et al.</i> ,)	Case No. 04-11321 (JLP)
)	
Debtors.)	Re D.I. 500
)	
In re:)	Chapter 11
)	
NORTHWESTERN CORPORATION,)	Case No. 03-12872 (JLP)
)	
Debtor.)	Re D.I. 3051

**DESIGNATION OF THE RECORD AND STATEMENT OF
ISSUES PURSUANT TO FEDERAL RULE OF
APPELLATE PROCEDURE 6(a) AND BANKRUPTCY RULE 8006**

The Official Committee of Unsecured Creditors (the “Netexit Committee”) appointed in the chapter 11 cases of Netexit, Inc., *et al.* (collectively, the “Netexit Debtors”)¹, by and through its undersigned counsel, hereby files this designation of the record on appeal and statement of issues to be presented pursuant to Federal Rule of Appellate Procedure 6(a) and Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Designation”). This Designation relates to the Netexit Committee’s Notice of Appeal of the United States Bankruptcy Court for the District of Delaware’s Order dated April 26, 2005 denying the Netexit Committee’s Motion For Reimbursement Of Amounts Paid By The Netexit Debtors On Behalf Of Northwestern Corporation, which was entered by United States Bankruptcy Judge John L. Peterson on April 28, 2005 [D.I. 480 in Case No. 04-11321 and D.I. 3019 in Case No. 03-12872].

¹ The Debtors are ATS Financial Services, Inc., Netexit of California Construction, Inc., Netexit of California, Inc., Netexit of Indiana, LLC, Netexit of Indiana, Inc., Netexit of North America, LLC, Netexit of Tennessee, Inc., Netexit of Pacific Northwest, Inc., Netexit of Oklahoma, Inc., Netexit of New York, LLC, Netexit of Mississippi, Inc., Netexit of Hawaii, Inc., and Eagle a Netexit Company Inc.

Designation Of Items To Be Included In Record On Appeal

The Netexit Committee hereby designates the following items for inclusion in the record on appeal:

<u>Exhibit</u>	<u>Description</u>	<u>Docket No.</u>	<u>Date Docketed</u>
1	Affidavit of Kendall G. Kliever in Support of First Day and Initial Motions Filed on Notice	9 in Case No. 04-11321	5/28/04
2	Motion of Debtors for an Order Pursuant to Federal Rule of Bankruptcy Procedure 1015(b) Directing Joint Administration of These Chapter 11 Cases	12 in Case No. 04-11321 1386 in Case No. 03-12872	5/28/04
3	Notice of Appointment of Official Committee of Unsecured Creditors	31 in Case No. 04-11321	6/08/04
4	Order Pursuant to Federal Rule of Bankruptcy Procedure 1015(b) Directing Joint Administration of These Chapter 11 Cases	60 in Case No. 04-11321 1532 in Case No. 03-12872	6/22/04 6/23/04
5	Motion for Order Authorizing the Debtors to Pay COBRA Obligations	79 in Case No. 04-11321	6/29/04
6	Objection of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> to Motion for Order Authorizing the Debtors to Pay COBRA Obligations	103 in Case No. 04-11321	7/12/04
7	Transcript of the Hearing held on July 14, 2004 before the Honorable Charles G. Case, II	122 in Case No. 04-11321 1723 in Case No. 03-12872	7/21/04
8	Transcript of Hearing held (PORTION) on September 15, 2004 before the Honorable Charles G. Case, II	210 in Case No. 04-11321 2142 in Case No. 03-12872	10/01/04
9	Order Authorizing the Debtors to Pay COBRA Obligations	246 in Case No. 04-11321	11/01/04

10	Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for an Order Compelling NorthWestern Corporation to Reimburse the Netexit Debtors for Payments Relating to COBRA	251 in Case No. 04-11321 2318 in Case No. 03-12872	11/03/04
11	Debtors' Objection to the Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for an Order Compelling NorthWestern Corporation to Reimburse the Netexit Debtors for Payments Relating to COBRA	263 in Case No. 04-11321 2390 in Case No. 03-12872	11/23/04
12	Joinder of the Official Committee of Unsecured Creditors of NorthWestern Corporation to Debtors' Objection to the Motion of the Creditors Committee of Netexit, Inc., <i>et al.</i> , for Order Compelling NorthWestern Corporation to Reimburse the Netexit Debtors for Payments to COBRA	264 in Case No. 04-11321 2392 in Case No. 03-12872	11/23/04
13	Order Denying Motion of the Official Committee of Unsecured Creditors of Netexit, et al. for an Order Compelling NorthWestern Corporation to Reimburse the Netexit Debtors for Payments Relating to COBRA	279 in Case No. 04-11321 2465 in Case No. 03-12872	12/08/04
14	Transcript of Hearing held on December 6, 2004 before the Honorable John L. Peterson	288 in Case No. 04-11321 2490 in Case No. 03-12872	12/15/04
15	Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for an Order Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(b) for Amendment and Clarification of Order	295 in Case No. 04-11321 2498 in Case No. 03-12872	12/20/04
16	Request to Change Filing Date [re: Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for an Order Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(b) for Amendment and Clarification of Order]	301 in Case No. 04-11321 2505 in Case No. 03-12872	12/22/04
17	Order Granting Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for Amendment and Clarification of Order [Request to Change Filing Date]	304 in Case No. 04-11321 2514 in Case No. 03-12872	12/28/04

18	Joint Objection of Netexit, Inc., <i>et al.</i> , and NorthWestern Corporation to the Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for an Order Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(b) for Amendment and Clarification of Order	312 in Case No. 04-11321 2606 in Case No. 03-12872	1/10/05 1/14/05
19	Joinder of the Official Committee of Unsecured Creditors of NorthWestern Corp. to Joint Objection of Netexit, Inc., <i>et al.</i> , and NorthWestern Corp. to the Motion of the Creditors' Committee of Netexit, Inc., <i>et al.</i> , for Order Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(b) for Amendment and Clarification of Order	319 in Case No. 04-11321 2607 in Case No. 03-12872	1/14/05
20	Transcript of Hearing held on February 10, 2005 before the Honorable John L. Peterson	2811 in Case No. 03-12872	2/15/05
21	Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	355 in Case No. 04-11321 2828 in Case No. 03-12872	2/18/05
22	Notice of Service of Subpoena	374 in Case No. 04-11321	3/02/05
23	Debtors' Objection to the Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	375 in Case No. 04-11321	3/03/05
24	NorthWestern Corporation's Objection to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc. for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	378 in Case No. 04-11321 2874 in Case No. 03-12872	3/03/05
25	Affidavit of Kendall G. Kliever [re: NorthWestern Corporation's Objection to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc. for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation]	379 in Case No. 04-11321 2878 in Case No. 03-12872	3/04/05

26	Netexit Committee's Supplement to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	405 in Case No. 04-11321 2924 in Case No. 03-12872	3/18/05
27	Request to Change Filing Date [re: Netexit Committee's Supplement to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation]	406 in Case No. 04-11321 2925 in Case No. 03-12872	3/21/05
28	Debtors' Response to Netexit Committee's Supplement to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	409 in Case No. 04-11321 2935 in Case No. 03-12872	3/22/05
29	Transcript of Hearing held on March 8, 2005 before the Honorable John L. Peterson	410 in Case No. 04-11321 2936 in Case No. 03-12872	3/23/05
30	Official Committee of Unsecured Creditors of Netexit, Inc., Motion to File Exhibit Under Seal	414 in Case No. 04-11321 2940 in Case No. 03-12872	3/24/05
31	NorthWestern Corporation's Joinder with Netexit Debtors' Response to Netexit Committee's Supplement to Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., <i>et al.</i> , for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation	415 in Case No. 04-11321 2941 in Case No. 03-12872	3/24/05
32	Order Granting Motion to File Under Seal	429 in Case No. 04-11321	4/04/05
33	Order that the Motion of the Official Unsecured Creditors Committee of Netexit Debtors for Reimbursement of Amounts Paid for COBRA Benefits is Denied	480 in Case No. 04-11321 3019 in Case No. 03-12872	4/28/05

Statement of Issues to Be Presented on Appeal

1. Whether the Bankruptcy Court erred in finding that the Netexit Debtors agreed to pay COBRA benefits for former employees who elected COBRA coverage with NorthWestern Corporation.

2. Whether the Bankruptcy Court erred in finding that the Netexit Debtors were obligated to pay COBRA benefits for former employees under applicable federal law.

3. Whether the Bankruptcy Court erred in denying the Motion of the Official Committee of Unsecured Creditors of Netexit, Inc., *et al.*, for Reimbursement of Amounts Paid by the Netexit Debtors on Behalf of NorthWestern Corporation (the “Reimbursement Motion”).

4. Whether the Bankruptcy Court erred in finding that any postpetition payment by NorthWestern Corporation related to COBRA benefits for former employees of the Netexit Debtors would be an administrative expense in the Netexit Debtors’ cases.

5. Whether the Bankruptcy Court erred in finding that the Netexit Committee did not challenge NorthWestern Corporation’s argument that it would be entitled to an administrative expense claim if it paid COBRA benefits for former employees of the Netexit Debtors.

6. Whether the Bankruptcy Court erred in denying the Reimbursement Motion, in contravention of previous Orders of the Bankruptcy Court and/or the law of the case.

7. Whether the Bankruptcy Court erred in holding that the Reimbursement Motion would be decided based on the pleadings and that no evidentiary hearing would be held.

Dated: May 16, 2005
Wilmington, Delaware

CROSS & SIMON, LLC

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